The City of San Diego

Report from Deputy Mayor Atkins and Councilmember Frye

DATE ISSUED: March 15, 2004

REPORT NO: AF-1

ATTENTION: Members of the Public and Honorable Mayor and City Council

SUBJECT: Open Meetings; Establish Right to Know Committee; SCA 1

SUMMARY

Issues

A.) Shall the Mayor and City Council adopt a Resolution to amend Council Policy 000-16 on Open Meetings to include the following?

1. *Beginning with the March 22, 2004, regular meeting of the City Council, all closed session items shall be placed on the appropriate regular meeting agenda of the City Council, and listed under the heading "Closed Session Notice and Disclosure".*

2. *All agenda items, including those for closed session, shall include a description that is easily understood and informs the public in a meaningful way.*

3. *At the regular meeting of the City Council, the public shall have the opportunity to directly address the City Council on any closed session item on the agenda.*

4. *At the regular meeting of the City Council, the Mayor and Councilmembers shall have the opportunity to discuss the basis for convening into closed session, ask questions, respond to questions from the public and vote to decide if they will convene into closed session. Current language stating that the Council cannot discuss a closed session item at a regular council meeting (as in the March 15, 2004 agenda items 203 and 204) shall be discontinued.*

5. In the closed session, only those matters listed on the regular council meeting agenda under Closed Session Notice and Disclosure may be considered. All closed sessions shall be transcribed by a reporter from the City Clerk's office, or other similar reporter. Transcripts shall be retained.

6. *After every closed session, the Mayor and City Council shall adjourn from closed session, reconvene in open session and publicly report, as required under the Brown Act,*

any final action taken in closed session and the vote or abstention of every member present.

7. The City Clerk shall provide to the Mayor and City Council a weekly listing of all litigation filed against or by the City of San Diego, and any City boards, redevelopment agencies and commissions, etc. The list shall include the name of the litigants, the date filed and the case number. A copy of the list shall be kept on file in the clerk's office and available for members of the public.

B.) Shall the Mayor and City Council establish a three-member council committee to amend the permanent Rules of the Council (Section 22.0101) with regard to the Brown Act and Public Records Act, and shall that committee be called The Right to Know Committee, and shall the committee be directed to complete a report in no more than 60 days?

C.) Shall the Mayor and Council support an amendment to the City Charter to incorporate the proposed state legislation known as SCA 1?

Recommendation

A.) Docket the proposed Resolution amending Open Meetings Council Policy 000-16 at the March 22, 2004 regular meeting of the City Council.

B.) Docket the item establishing a three-member council committee called The Right to Know Committee at the March 22, 2004 regular meeting of the City Council.

C.) Request that the Mayor docket at the Rules Committee for discussion and vote, to place on the November 2004 ballot, an amendment to the City Charter to incorporate the state legislation (SCA 1).

BACKGROUND

On Monday, March 8, 2004, Deputy Mayor Atkins and Councilmember Frye sent a memo to the Mayor and Councilmembers requesting that a discussion on the Brown Act be docketed for March 15, 2004. (See Attachment 1.)

On Friday, March 12, 2004, *The San Diego Union-Tribune* ran an editorial by Deputy Mayor Atkins and Councilmember Frye on the open meeting laws. (See Attachment 2.)

In addition, on March 12, 2004, Councilmember Jim Madaffer sent out the following in an email newsletter that said in part:

"Over the past 10 years or so, there have been a number of controversial City matters the public was very interested to know more about but were handled by the City Council in closed session instead. This past week I was in Washington DC for the San Diego Association of Governments (SANDAG). While I was

there, I learned two of my colleagues formally questioned the need for so many items being discussed in closed session. I applaud Councilmembers Toni Atkins and Donna Frye for bringing this issue forward.

Over the years, I have long associated the many closed sessions of the Council where Councilmembers are treated like mushrooms ^ in other words, Councilmembers are often kept in the dark about important issues. Often, we don't have the benefit of hearing input from the public on matters discussed in closed session.

The Brown Act stipulates that the Council can only meet in closed session for very specific reasons detailed in the law. It's important for the public and the Council to hear a review of these specific reasons and for the public to understand when the Council must in fact meet in closed session. Certainly I agree for the need for limited closed sessions, but I also feel the topics discussed in closed session should be reserved for those special instances only. I believe when closed sessions are used for the most important of issues will the public gain greater confidence in what must be discussed behind closed doors ^ namely to protect your tax dollars."

According to Terry Francke, First Amendment Coalition, "there is no reason in law or policy why the public cannot share in an update or progress report on matters under litigation or bargaining, so long as the report is confined to matters already on the public record or otherwise known to the litigation or bargaining adversary.

The sole lawful reason for these closed sessions is to keep the adversary from learning new information about the city's position. They are not intended to keep the public in the dark as to information already shared with, or coming from, that adversary, and yet perversely, that is how they are typically used.

So, for example, in addressing pending litigation (that is, an action already filed in court) the city attorney could report to the council -- and the public -- on its actions taken in court and/or the adversary's responses thereto, as well as matters discussed with the adversary in settlement efforts, and the responses thereto. A factual update on those matters in public would be the prelude to the city attorney's analysis of those facts and consequent advice, and the council's related questioning, deliberation and suggestions, all of which are proper for closed session. The same bifurcated approach would be just as appropriate (and viable) for threatened litigation where, in any event, the city is required by the Act at least to release any documents reflecting the threat made and who is making it.

Likewise, closed sessions on real property negotiations or bargaining with employee units could be (and I believe should be) preceded by a public report to the council on the progress of those talks, simply relaying information already known to the other bargaining party. There first should be a report on the commonly known facts in public, and then a closed session for consultation on how to proceed and why."

The public has a right to know how their business is being conducted and has the right to participate in all aspects of the decision-making process. California State law requires that the public's business to be conducted in public, unless it is not in the public's best interest to do so. Closed sessions may be held, but only under very limited circumstances. Closed sessions must be authorized by express exceptions to the open meeting laws.

DISCUSSION

A.) Amend Open Meetings Council Policy 000-16

The City Council may impose requirements upon themselves, which allow greater access to their meetings than prescribed by the minimal standards set forth in the Brown Act.

The following changes to Council Policy 000-16 on Open Meetings (see attachment 3) are proposed for adoption on March 22, 2004 at the regular City Council meeting. All policy language that is underlined is proposed to be part of the Resolution clarifying and strengthening Open Meeting Council Policy 000-16. This policy shall take effect immediately upon City Council approval of the Resolution. Most of these changes are already part of the Brown Act, but it is necessary for us to reform and strengthen that policy immediately.

1.Beginning with the March 22, 2004, regular meeting of the City Council, all closed session items shall be placed on the appropriate regular meeting agenda of the City Council, and listed under the heading "Closed Session Notice and Disclosure".

This is a formatting change only. The closed session agenda would be included in the regular City Council agenda, rather than as a separate agendas.

2. All agenda items, including those for closed session, shall include a description that is easily understood and informs the public in a meaningful way. Meaningful shall be defined as: "clear and specific enough to alert a person of average intelligence and education whose interests are affected by the item that he or she may have a reason to attend the meeting or seek more information on the item. The description should be concise and written in plain, easily understood words, but with sufficient details to inform the average person."

According to the California First Amendment Coalition, "This disclosure shall include a description, not a code phrase unintelligible to the public, or an empty category label appearing without further elaboration on every agenda. As stated in several recent editions of the Attorney General's guide to these laws: 'The purpose of the brief general description is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body'.

This does not mean that the agenda description need educate the reader about all aspects of an item - such would often be impossible in any "brief" or "general" way, and the law clearly assumes that citizens who have a particular interest in a given subject matter will take steps to find out more about the proposal in advance, or to attend the meeting, or both. But it does mean, among other things, that when it is possible to use a few words to alert the public to an obviously consequential or controversial proposal, a failure to do just that may violate the law if its effect is to leave those most likely to care unaware and with lowered guard."

For authorized exceptions to open meetings, the following minimum noticing and disclosure shall apply:

Significant Exposure to Litigation

When a closed session is scheduled under the heading -- significant exposure to litigation -- unless the facts and circumstances creating the threat are not yet known to the likely plaintiffs, they must be accessible to the public. The result is a significant addition to the general agenda listing requirements. As noted on page 22 of the Attorney General's guide, The Brown Act: Open Meetings for Local Legislative Bodies, under Government Code § 54956.9 (b) (3) there are requirements for supplementary oral or written announcements, in effect, in four such situations:

* If there has been no kind of communication yet from the likely plaintiffs but the city is aware of something that is likely to prompt a litigation threat - some accident, disaster, incident or transaction such as a contract dispute -- "the facts must be publicly stated on the agenda or announced" prior to the closed session.
* If a claim or some other written threat of litigation has been received, the document is a public record and "reference to the claim or communication must be publicly stated on the agenda or announced" prior to the closed session.
* When the closed session is triggered by a litigation threat made in an open and public meeting, "reference to the statement must be publicly stated on the agenda or announced" prior to the closed session.
* When an oral threat of litigation is made outside a meeting, it may not be made the basis of a closed session unless the official who became aware of it makes a memo explaining what was said. The memo is a public record and "reference to the claim or communication must be publicly stated on the agenda or announced" prior to the closed session.

With respect to every item of business to be discussed in closed session pursuant to **CONFERENCE WITH REAL PROPERTY NEGOTIATORS** the following shall apply:

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

With respect to every item of business to be discussed in closed session pursuant to **CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION** the following shall apply:

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)
Or
Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

3. At the regular meeting of the City Council, the public shall have the opportunity to directly address the City Council on any closed session item on the agenda.

California Government Code 54954.3 (a) requires that the public have the opportunity to address their elected officials on any agenda item.

4. At the regular meeting of the City Council, the Mayor and Councilmembers shall have the opportunity to discuss the basis for convening into closed session, ask questions, respond to questions from the public and vote to decide if they will convene into closed session. Current language stating that the Council cannot discuss a closed session item at a regular council meeting (as in the March 15, 2004 agenda items 203 and 204) shall be discontinued.

Currently, the Mayor, City Manager and City Attorney decide what items will be placed on the closed session agenda and the City Council has no input into this process. Also, input by the City Council as to the appropriateness of convening into closed session is not only discouraged, but seemingly forbidden, as reflected in the March 15, 2004 closed session agenda items 203 and 204. Both items include the following language: **"There is no Council discussion of this item."** (See Attachment 4.)

The Mayor and City Council have a duty and obligation to discuss and then decide whether they want to meet in closed session. Any attempt to deny or discourage this discussion must be discontinued immediately.

5. In the closed session, only those matters listed on the regular council meeting agenda under the Closed Session Notice and Disclosure may be considered. All closed sessions shall be transcribed by a reporter from the City Clerk's office or other similar reporter. All transcripts shall be retained.

Closed sessions should include a transcription of each meeting. Closed sessions are no different than open sessions in this regard. This action should help increase the public's confidence that we are following the law. This also provides documentation, in case of a legal challenge, that only those matters listed on the closed session agenda were discussed.

6. After every closed session, the Mayor and City Council shall adjourn from closed session, reconvene in open session and publicly report, as required under the Brown Act, any final action taken in closed session and the vote or abstention of every member present.

This is required under California law. Special attention must be paid to those items where a final action has been taken to ensure that a report is made in open session at the public meeting during which the closed session is held. Reporting out in an open session appears to be the exception and not the rule. Sometimes a press conference is held instead of the public meeting to make the report. While a press conference is certainly a good way to provide information, it should not be used in place of a public meeting in open session.

The following is directly from the Brown Act, but should be added to the Council Policy as a reminder that this is the law.

(1) Approval of an agreement concluding real estate negotiations pursuant to California Government Code Section 54956.8 shall be reported after the agreement is final, as specified below:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as specified below:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the non-renewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956,if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in paragraph (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

7. The City Clerk shall provide to the Mayor and City Council a weekly listing of all litigation filed against or by the City of San Diego, and any City boards, redevelopment agencies and commissions, etc. The list shall include the name of the litigants, the date filed and the case number. A copy of the list shall be kept on file in the clerk's office and available for members of the public.

This action will help keep the Mayor, City Council and members of the public aware of litigation that has been filed against or by the City of San Diego and its boards, redevelopment agencies and commissions. Often, litigation is filed against the City, yet councilmembers are not made aware of this until after it is reported in the media. The elected officials have a right to know about existing litigation, *before* they read about it in the media. It will also help councilmembers and the public stay better informed by allowing them to request copies of the court cases if they so choose.

B.) Establish The Right to Know Committee

This committee shall be comprised of three city councilmembers. The committee shall meet and work with members of the public to draft new Permanent Rules of Council with particular attention to the Brown Act and Public Records Act. All meetings shall be noticed so that members of the public may attend and participate. Items of concern include but are not limited to: Closed Session Meetings, Serial Meetings, Non-agenda Public Comment, the public's ability to obtain documents, noticing of meetings and Brown Act compliance of other City of San Diego boards, commissions and committees.

It shall be the intent of the committee to meet with members of the California First Amendment Coalition and other organizations to enlist their expertise when drafting new, permanent Rules of the Council. The committee will file a final report with the Rules Committee no later than 60 days after its first meeting.

C.) Place on the November 2004 ballot, an Amendment to the San Diego City Charter to incorporate SCA 1

SCA 1 is legislation that would place a Constitutional Amendment on the state ballot to allow voters to strengthen the public's right of access to government deliberations and records. We propose placing a similar measure on the November 2004 citywide ballot that would incorporate SCA 1 by amending the San Diego City Charter.

According to the California First Amendment Coalition, SCA 1 would firmly establish a fundamental right for people to scrutinize what their government is doing and contribute their ideas to the process of policy-making. The exact language is:

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. Public agencies and officers exist to aid in the conduct of the people's business, and their actions and deliberations should be open to public scrutiny. Therefore, except as provided pursuant to this constitution, the people have a right to attend, observe, and be heard in the meetings of elected and appointed public bodies, and to inspect and copy records made or received in connection with the official business of any public body, agency, officer, or employee, or anyone acting on their behalf.

Second, it would establish an equally firm commitment to privacy for individuals, maintaining confidentiality for facts held by government about one's personal life, unless the person is seeking or holding a position of public trust. The language is:

Privacy also being a fundamental right of the citizens of this state, nothing in this section shall be construed to limit the ability of the legislature to provide for the protection of information about private individuals submitted to or obtained by any public body, agency, officer, or employee, or anyone acting on their behalf, except to the extent the information relates to the qualifications or fitness of a person for any elective or appointive office in the government.

Third, SCA 1 would allow the legislature to create certain logical exceptions, but only to protect important public and private interests such as those widely recognized in current law. The language is:

The legislature may enact other limitations on the right of public access to governmental information only as necessary to protect public safety or private property, to ensure the fair and effective administration of justice, or to provide for the preservation of public funds and resources.

Finally, SCA 1 requires a government agency to state a clear and understandable reason why secrecy is necessary under the Constitutional Sunshine Amendment's exceptions. Current law has been interpreted to allow a government agency to simply state what exemption it is claiming without any explanation. Also, under the Constitutional Sunshine Amendment the government could not overdo the secrecy by having it cover more ground or last longer than was necessary. The language is:

Any application of such limiting statutes by any public body, agency, officer, or employee, or anyone acting on their behalf, to deny rights specified in paragraph (1), shall be based on particularized findings demonstrating a substantial probability of serious harm to the public interest that the denial will avert, and that such harm cannot otherwise be averted by reasonable alternatives, and shall be no broader in scope or longer in duration than necessary to avert the identified harm.

In addition, according to the California First Amendment Coalition, existing laws have not stopped widespread secrecy in government. For example, even a state senator using the Public Records Act was unable to obtain Department of Insurance records

documenting how Insurance Commissioner Chuck Quackenbush was regulating insurance companies after the devastating Loma Prieta earthquake. Quackenbush was forced to resign, but it was a "leak," not the Public Records Act, that produced the evidence. A legislative task force noted this and other Public Records Act failures in a 1998 report, "KEEP OUT: The Failure of the California Public Records Act," concluding that that law had been "interpreted, reinterpreted and fiddled with to the point that it has become of little appreciable value to the public."

The Constitutional Sunshine Amendment would establish access to government by citizens as a fundamental right with some specific logical exceptions.

Respectfully Submitted,

Toni Atkins
Donna Frye

Deputy Mayor Toni Atkins
Councilmember Donna Frye

Attachments 1 through 4

Cc: City Manager
City Attorney
City Clerk

DEPUTY MAYOR TONI ATKINS
COUNCILMEMBER DONNA FRYE
City of San Diego

MEMORANDUM

DATE: **March 8, 2004**

TO: **Mayor and Councilmembers**

FROM: **Deputy Mayor Toni Atkins** Toni Atkins
Councilmember Donna Frye Donna Frye

SUBJECT: **Brown Act/Closed Session**

Under the Brown Act, the Mayor and City Council, not the City Attorney, decide whether to meet in closed session. Closed sessions are the EXCEPTION to the open meeting requirements in the Brown Act. Even as to matters that are appropriately discussed in closed session, it is the Mayor and City Council that must make an affirmative decision regarding compliance with the authorized exceptions in the Brown Act, and determine whether it is in the public's best interest to hold those discussions in private.

In order to ensure that we meet both the letter and spirit of the law, discussions about the basis for going into closed session should take place in open session, *before* we meet in closed session. Therefore, before we attend any further closed session meetings, we ask that you:

1. Docket an agenda item for Monday March 15, 2004 for the Mayor and City Council to discuss and set the new policy for how we want to proceed before meeting in closed session. This will include, but not be limited to, a discussion on:

a. all authorized exceptions of the Brown Act (personnel, pending litigation and attorney-client privilege, real property negotiations, labor negotiations, public security and license application);

b. the policy of how and by whom the agenda items for closed session will be determined;

c. the information that will be included in the closed session notice and how that information will be drafted so the public is better informed and, therefore, better able to participate;

d. the process to determine when and how the public, Mayor and City Councilmembers are notified of litigation filed against the City;

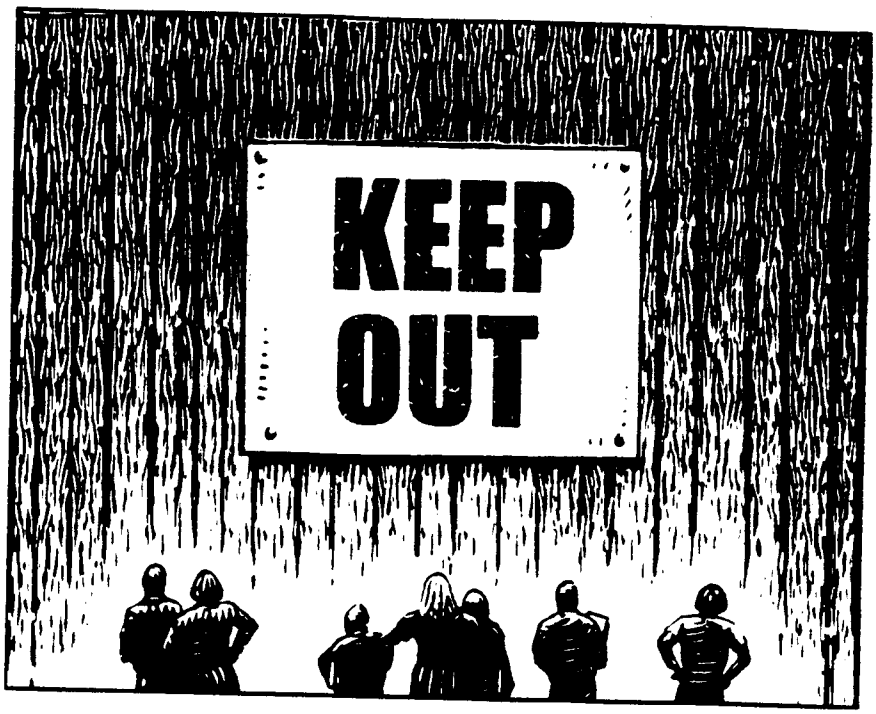
e. how closed session items will be noticed on the open session docket.

cc: Casey Gwinn, City Attorney

ATTACHMENT #2

Let the sun shine in on government

By Toni Atkins and Donna Frye



John MacDonald

The purpose of California's Ralph M. Brown Act is very simple. Its purposes are to ensure the accountability of government officers and to enable citizens' oversight of government agencies by keeping official decision-making processes as open as possible to public knowledge and participation. As stated in the Brown Act's preamble:

... [T]he public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

In 1996, when the California Alliance for Utility Safety and Education, or CAUSE, believed that proper noticing requirements were not met, it filed a lawsuit against the city. CAUSE alleged that the City Council had adopted a practice of "... giving no public notice of the facts and circumstances justifying closed sessions." The 4th District Court of Appeal stated that "... the City Council did not properly give notice of the closed session it conducted on March 28, 1995, used the closed session to discuss issues other than receiving advice from its attorneys and failed to properly give notice of the public session in which the settlement agreement with SDG&E was formally approved and failed to conduct the public hearing they believe is required by the city charter" and that "... even after closed session hearings had occurred, and the City Council had determined that it would adopt the proposed settlement, the agenda materials prepared by the city failed to fully disclose the nature and scope of the settlement being considered by the city."

Recently, there have been a number of controversial issues discussed in closed session that have been of great interest to the public. We clearly understood this, and on March 8 made a very simple, but important decision regarding how to change the current San Diego City Council closed session policy.

Under the Brown Act, the mayor and City Council, not the city attorney, decide whether to meet in closed session. Closed sessions are the exception to the open meeting requirements.

Even on matters that are appropriately discussed in closed session, it is the mayor and City Council that must make an affirmative decision and determine whether it is in the public's best interest to hold those discussions in private.

According to the Brown Act, the City Council can only meet in closed session for a limited number of reasons, which are clearly spelled out. When a locally elected body begins to meet in closed session on a significant number of items, it creates an air of secrecy, which results in a lack of public trust.

It is crucial that the public has access to council discussion on these matters, and it is equally important that the council hear the opinions of community members who wish to speak.

We decided not to attend the March 9 closed session hearing in order to bring about change. Discussions about the basis for going into closed session must take place in open session, before the council meets in closed session.

At our request, on Monday, March 15, there will be an open session discussion for the public on the Brown Act. This will include a discussion on:

- All authorized exceptions of the Brown Act (personnel, pending litigation and attorney-client privilege, real property negotiations, labor negotiations, public security and license application)
- The policy of how and by whom the agenda items for closed session will be determined
- The information that will be included in the closed session notice and how that information will be drafted so the public is better informed
- How closed session items will be noticed on the open session docket.

We encourage all members of the public to participate in this discussion by attending the City Council hearing. Any member of the public may speak on any item on the council agenda by filling out a public speaker slip in favor or opposition to an item, which are available in the City Council chambers. This Monday's City Council meeting will begin at 2 p.m. The City Council meets at 202 C St. on the 12th floor.

The ultimate goal is to ensure that closed sessions are the exception to the open meeting requirements, not the rule.

Atkins is deputy mayor of San Diego. She represents the 3rd District on the City Council. **Frye** represents the 6th District on the City Council.

CITY OF SAN DIEGO, CALIFORNIA

COUNCIL POLICY

SUBJECT: OPEN MEETINGS
POLICY NO.: 000-16
EFFECTIVE DATE: June 20, 1994

BACKGROUND:

The Ralph M. Brown Act regulates the conduct of the Legislative body of a local agency, in addition to its commissions, boards, and committees. It is the intent of the law that actions be taken and deliberations conducted openly.

The provisions of the Brown Act are incorporated into Municipal Code Section 22.0101, Permanent Rules of the Council, which governs the actions of the City Council. However, a policy is needed for the various City boards, commissions, and committees.

PURPOSE:

It is the purpose of this policy to reaffirm that the provisions of the Ralph M. Brown Act are to be followed by the various City boards, commissions, and committees. This policy applies to standing committees of the City Council, whether or not the committees are made up of a quorum of Councilmembers, if the committees have standing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution, or formal action of the Council. This policy is not intended to apply to an ad hoc committee made up of less than a quorum of Councilmembers, if the ad hoc committee does not have standing subject matter jurisdiction or does not have a meeting schedule fixed by charter, ordinance, resolution or formal action of the City Council.

POLICY:

1. It is the policy of the City Council that all business conducted by City-appointed boards, commissions and corporations, or by committees thereof, be in full view of the public and news media, except for matters dealing with personnel, litigation, or threats to security of public buildings or to access to public services or facilities.

2. It is the policy of the Council that all City-appointed boards, commissions or corporations, and committees thereof, closely adhere to the requirements of the Brown Act and conduct regular meetings only at times previously established by formal action or special meetings upon 24 hours notice to the news media and members.

3. Per requirements of the Brown Act, the subject matter to be considered at regular meetings shall be announced to the public and news media through a written docket posted in a location that is freely accessible to members of the public at least 72 hours prior to such meetings.

   Special meetings shall be announced through a written notice and docket posted at least 24 hours prior to such meetings.

CITY OF SAN DIEGO, CALIFORNIA

COUNCIL POLICY

Matters not included on the docket may be discussed upon determination by a majority vote that an emergency situation, as defined in the Brown Act, exists; upon determination by a two-thirds vote, or unanimous vote if less than two-thirds of the members are present, that the need to take action arose subsequent to the docket being posted; or if the item appeared on a properly posted docket for a meeting occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

In the case of an emergency, an emergency meeting may be held without complying with either the 24-hour notice requirement or the 24-posting requirement. As defined in the Ralph M. Brown Act, "emergency situation" means any of the following: (a) work stoppage or other activity which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body, or (b) crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

HISTORY:

Adopted by Resolution R-213801 07/16/1975
Amended by Resolution R-268827 07/13/1987
Amended by Resolution R-275480 04/16/1990
Amended by Resolution R-284064 06/20/1994

ADOPTION AGENDA, DISCUSSION, HEARINGS

SPECIAL HEARINGS:

ITEM-203: Conference with Real Property Negotiator, pursuant to California Government Code Section 54956.8:

Property:	Approximately 1.25 acres located in the City of Santee on the east side of Highway 67 at the north terminus of Graves Avenue (APN 384-120-38)
City Negotiator:	Real Estate Assets Director
Negotiating Party:	Padre Dam Municipal Water District
Under Negotiation:	Terms of Potential Disposition of Property

Prior to City Council discussion in Closed Session and in compliance with the Brown Act (California Government Code Section 54956.8), this item is listed on the docket **only** for public testimony.

There is no Council discussion of this item. The City Council's actions are:

1) Open the Public Hearing and accept testimony from any members of the public wishing to address the City Council on this subject; 2) Conclude and close the public hearing; and 3) Refer the matter to Closed Session on March 16, 2004.

NOTE: Members of the public wishing to address the City Council on this item should speak "in favor" or "in opposition" to the subject.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

SPECIAL HEARINGS: (Continued)

ITEM-204: Conference with Real Property Negotiator, pursuant to California Government Code Section 54956.8:

Property:	Qualcomm Stadium.
Agency Negotiator:	Assistant City Attorney Leslie J. Girard, Deputy City Manager Bruce Herring, Paul Jacobs, Esq., Daniel S. Barrett, and Robert Kheel.
Negotiating Parties:	City of San Diego and the San Diego Chargers.
Under Negotiation:	Real Property Interests at the Qualcomm Stadium site pursuant to the recommendations of the Citizens Task Force on Chargers Issues, and pursuant to the terms of Paragraph 31 of the 1995 Agreement for the Partial Use and Occupancy of Qualcomm Stadium.

Prior to City Council discussion in Closed Session and in compliance with the Brown Act (California Government Code Section 54956.8), this item is listed on the docket **only** for public testimony.

There is no Council discussion of this item. The City Council's actions are:

1) Open the Public Hearing and accept testimony from any members of the public wishing to address the City Council on this subject; 2) Conclude and close the public hearing; and 3) Refer the matter to Closed Session.

NOTE: Members of the public wishing to address the City Council on this item should speak "in favor" or "in opposition" to the subject.

NON-DOCKET ITEMS

ADJOURNMENT IN HONOR OF APPROPRIATE PARTIES

ADJOURNMENT